

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 179 of 1998

in

SPECIAL CIVIL APPLICATION NO. 8772 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and  
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DAYABEN BHUPESH HALAI

Versus

AIR INDIA INTERNATIONAL

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Appearance:

MR VB PATEL, SR. ADVOCATE WITH MR DEEPAK V PATEL for Appellant  
MR NY CHUDGAR for Respondent

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CORAM : MR.JUSTICE M.R.CALLA and  
MR.JUSTICE J.R.VORA

Date of decision: 10/08/98

ORAL JUDGEMENT (Per M.R.Callla, J.)

Heard learned counsel.

The appellant herein had traveled by Air India International flight from Ahmedabad to London via Mumbai. She was having a valid passport and it is her claim that she had a visa to undertake the aforesaid journey and after checking the passport and the visa, the respondent Air India International had issued ticket to her to undertake the journey from Ahmedabad to London (Heathrow Airport) via Mumbai. When the appellant reached Heathrow Airport, the concerned authorities at the Airport found that the appellant did not hold a valid visa in accordance with the immigration rules of UK and therefore she was not permitted to enter the country and was ordered to be deported back to India. The Officers of the Air India International were asked by the authorities at the Heathrow Airport to send the appellant back to India and thereupon she was brought back to India from Heathrow Airport by Air India International flight. It is the case of the appellant that she had not purchased any ticket for the return journey nor any ticket was given to her by the Air India International and that she was only given a boarding pass to board the flight for return journey. The respondent Air India International withheld the passport of the appellant because she did not pay the fare for her journey back to India from Heathrow Airport.

The appellant, therefore, preferred Special Civil Application No.8772/97 before this Court with a prayer that the respondent Air India International may be directed to return the passport as well as the fare which she had paid for her journey from Ahmedabad to Heathrow Airport via Mumbai. It is also pointed out that till the arrangements were made for her return to India, a temporary visa for a period of three days was given to her and during this period of three days, she stayed with her son in UK. The appellant also claimed a sum of Rs.1.50 lacs as damages for the stress, tension and mental agony which she suffered. The appellant's case is that it was the duty of the Air India International to thoroughly check the visa and other papers before issuing the ticket and see as to whether all the papers regarding visa were in accordance with the immigration rules of UK or not and that the Air India International had failed to discharge this duty and it is this failure which has resulted into the suffering of the appellant and in any case there was no justification for the Air India International to withhold the passport of the appellant and that the passport could be withheld only by the Central Government and that too for valid reasons.

The learned single Judge has rejected the petition on the basis that the proper forum for adjudication of this type of grievance was the civil court. It has also been observed by the learned single Judge that the question as to whether the respondent could withhold the passport of the petitioner on account of the claim for money of more than Rs.1 lac could be considered and decided by the appropriate civil court and that such disputed questions could not be gone into and decided under Article 226 of the Constitution of India.

It is against this order dated 9th December 1997 passed by the learned single Judge in Special Civil Application No.8772 of 1997 that the present LPA was filed. This LPA was admitted on 22nd April, 1998 after issuing notice to the other side and on 5th May, 1998 the Division Bench granted interim relief in terms of para 5-A of the Civil Application on the condition that the appellant will deposit an amount of Rs.36,825/- with this court within two weeks. The learned counsel for the appellant stated that he himself had volunteered and had invited this order with regard to deposit of Rs.36,825/- and the appellant has in fact deposited this amount with this Court within time only to show the bonafides of the appellant. The fact remains that the receipt in token of the deposit of this amount issued by this Registry was produced before the Air India International and therefore in terms of this order dated 5.5.98, whereby Civil Application was disposed of, the passport was returned by the Air India International to the present appellant.

We have heard learned counsel for both the sides.

We find that there is no such disputed question of fact which cannot be gone into by this Court for the limited purpose of considering as to whether the Air India International has authority to withhold the passport or not in such type of cases. It appears that the Air India International has withheld the passport for realisation of the amount of fare for the return journey from Heathrow Airport to India. There may also be a purpose to preempt any claim of damages being made by the appellant in view of the stress and agony suffered by her because, according to her, the respondent Air India International had failed to discharge its duty by not checking the visa papers properly and in accordance with the immigration rules of UK. Be that as it may, the fact remains that the passport could not be withheld by the Air India International and only the Central Government has authority to withhold the passport that too for valid

reasons in an appropriate case.

Mr Chudgar appearing for the Air India International has submitted that in such cases they obtain a bond from the concerned passenger to reimburse the fare for the return journey in case it is paid by the Air India International and the concerned passenger is not able to make the payment at that time. However, he has not been able to produce the bond or a copy thereof and he has stated that no such bond is available. He is rest contended by filing the proforma of the bond. In any view of the matter, the passport cannot be withheld by the Air India International and it is given out that the same has already been returned to the appellant after the interim order passed by this Court in the Civil Application to which reference has already been made hereinabove. So far as the dispute regarding reimbursement of return fair, it is certainly a dispute which can be properly adjudicated before the civil court and similarly the dispute about the appellant's claim for the refund of the amount which she had paid for the ticket from Ahmedabad to Heathrow Airport via Mumbai and her claim regarding damages of Rs.1.5 lacs as claimed through the Special Civil Application may also be properly adjudicated before civil court and for these matters, we find that no directions can be issued by this Court under Article 226 of the Constitution because such adjudication would involve disputed questions of fact and inquiry therein. In the facts and circumstances of this case, we find that the order with regard to return of the passport is the only order which can be passed in favour of the appellant and we find that the passport has already been returned. Thus the return of the passport has to be treated as final in the peculiar facts and circumstances of this case and for rest of the disputes it will be open for the parties to get their claims adjudicated by way of filing appropriate case before appropriate forum and nothing said or observed in this judgment or in the order of the learned single Judge shall prejudice the rights of any of the parties in their respective claims. The amount of Rs.36,825/- which was deposited by the appellant in this court in terms of order dated 5th May, 1998 passed in Civil Application No.1519/98 shall be returned to the appellant.

This Letters Patent Appeal is therefore partly allowed to the extent as above. No order as to costs.

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